

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLPET NO. E095 OF 2025

SAMUEL NGUGI.....1ST
PETITIONER/APPLICANT

COLLINS OTIENO.....2ND
PETITIONER/APPLICANT

KAREN ONYANGO.....3RD
PETITIONER/APPLICANT

SERAPHINE MURAGURI.....4TH
PETITIONER/APPLICANT

WYCLIFFE OMITI.....5TH
PETITIONER/APPLICANT

MAKONGENI RESIDENTS' ASSOCIATION.....6TH
PETITIONER/APPLICANT

VERSUS

KENYA RAILWAYS STAFF RETIREMENTS
BENEFITS SCHEME.....1ST
RESPONDENT

STATE DEPARTMENT FOR HOUSING
ANDURBAN DEVELOPMENT.....2ND
RESPONDENT

AFFORDABLE HOUSING BOARD.....3RD
RESPONDENT

RULING

1. Before this court for determination is the notice of motion dated 3rd December, 2025 filed by the petitioners/applicants and it is expressed to be brought under **Articles 20,22, 50(1), 159(2) and 258** of the **Constitution** of Kenya, **Rules 3(4),(8), 4,13,19,23** and

24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, Section 13 (5) and 19 (2) of the Environment and Land Court Act, Section 5 of the Judicature Act, Sections 1A,1B,3 and 3A of the Civil Procedure Act, and Order 40 Rule 3 of the Civil Procedure Rules seeking the following orders:-

- 1. That the honourable court do cite Isaac Sila (Chief Executive Officer of Kenya Railways Staff Retirement Benefits Scheme) and Nancy Chemtai Sang (Chairperson of the Board of Trustees of Kenya Railways Staff Retirement Benefits Scheme) for contempt of the orders of the honourable court issued on 24 November, 2025.***
- 2. That the honourable court do issue summons to Isaac Sila (Chief Executive Officer of Kenya Railways Staff Retirement Benefits Scheme) and Nancy Chemtai Sang (Chairperson of the Board of Trustees of Kenya Railways Staff Retirement Benefits Scheme) to attend to and appear before the honourable court in person on a date to be determined, to show cause why they should not be punished for contempt.***
- 3. That Isaac Sila (Chief Executive Officer of Kenya Railways Staff Retirement Benefits Scheme) and Nancy Chemtai Sang (Chairperson of the Board of Trustees of Kenya Railways Staff Retirement Benefits Scheme), be penalised on such terms as the honourable court may determine, for contempt of the court for having deliberately***

disobeyed orders of this honourable court issued on 24 November, 2025.

- 4. That pending the hearing and determination of the application and petition, a conservatory order do issue stopping the respondents and/or any person acting on their behest or instructions or authority from undertaking any developments on the suit property, being Makongeni Estate situate on L.R No. 209/6829 Makongeni Estate.***
 - 5. That the honourable court do grant any other appropriate orders as it may deem just and expedient to protect the dignity and authority of the honourable court.***
 - 6. That costs of this application be in the cause.***
2. The application is premised on the grounds on its face, and further supported by the affidavit of Collins Otieno, the 2nd petitioner/applicant sworn on even date. The 2nd petitioner/applicant deposed that this court issued orders on 24th November, 2025 which were served upon the respondents who acknowledged the same. Further, that Isaac Sila and Nancy Chemtai Sang continue to violate the court's orders and have refused to restore water and electricity services. In addition, they have continued to evict and demolish houses in Makongeni estate.
3. Isaac Sila, the chief executive officer of the 1st respondent swore an undated replying affidavit in response to the application and

denied deliberately ignoring or breaching the orders of this court. He deposed that they did not have the capacity to implement the said orders for the reasons that neither the 1st respondent nor its officials are responsible for the supply of electricity and water services in any locality, nor are they in control of the entities that supply the said services. For this reason, he stated that the 1st respondent could not restore the said services.

4. Further, the 1st respondent deposed that all the occupants on the suit property in Makongeni area had formally been served with notices to vacate the property and further received ex-gratia compensation for moving out of the suit property by the time the said court orders were issued. As advised by their counsel on record, contempt of court is personal in nature and liability cannot be imposed on a person who is not directly responsible for implementation of the order. In the present case, the 1st respondent denied that it was directly responsible for any eviction and/or demolitions that took place on the suit property.

5. The 1st respondent deposed that its officials do not have any mandate, control or exercise power over the riot police whose heavy presence was documented during the alleged demolitions. Further, its officials do not have the capacity or resources

required to mobilize and undertake such a considerably significant exercise.

6. The 3rd respondent filed grounds of opposition dated 23rd February, 2026 opposing the application for contempt on the following grounds:-

a. The application as filed seeks to indirectly cloth the prayer for conservatory orders with the precedence/priority granted to contempt of court applications.

b. The application as filed is an omnibus application with differing prayers that cannot be determined together.

c. Prayer 4 for conservatory orders cannot be determined in the contempt of court application.

d. The contempt prayers ought to be determined first and separately from the conservatory prayer.

e. The earlier applications for conservatory orders, dated 19 and 23 November, 2025 on whose basis the contempt application is based, are still pending and are yet to be determined inter-partes or withdrawn to warrant consideration of prayer 4.

f. As it is a contempt of court application, there

are no prima facie or sufficient grounds in support of the prayer for conservatory orders to warrant their issuance.

g. The motion as filed is incurably defective and an abuse of the court process.

7. The court gave directions that the application be canvassed by way of written submissions. By the time of writing this ruling, none of the parties had filed their submissions. Nevertheless, having considered the application, the replies thereof, I am of the view that the issue for determination is *whether the application has merit.*

8. The instant application seeks to cite the 1st respondent's officials for contempt of court for being in disobedience of this court's orders issued on 24th November, 2025 directing the respondents to immediately restore electricity and water services to the residents of the affected Makongeni estate, a conservatory order to prevent eviction of the said residents and a conservatory order to halt the demolition of the said Makongeni estate situate on L.R No. 209/6829.

9. **Section 5** of the **Judicature Act** provides as follows:-

“(1) The high court and the court of appeal shall have the same power to punish for contempt

of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.

(2) An order of the high court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the high court.”

10. Under Rule 81.4 of the English Civil Procedure Rules (Amendment No. 3) Rules, 2020 the requirements for an applicant of contempt of court are provided as follows:-

“(1) Unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation.

(2) A contempt application must include statements of all the following, unless (in the case of (b) to (g)) wholly inapplicable—

(a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);

(b) the date and terms of any order allegedly breached or disobeyed;

- (c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;**
- (d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service;**
- (e) confirmation that any order allegedly breached or disobeyed included a penal notice;**
- (f) the date and terms of any undertaking allegedly breached;**
- (g) confirmation of the claimant's belief that the person who gave any undertaking understood its terms and the consequences of failure to comply with it;**
- (h) a summary of the facts alleged to constitute the contempt, set out numerically in chronological order;**
- (i) that the defendant has the right to be legally represented in the contempt proceedings;**
- (j) that the defendant is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test;**
- (k) that the defendant may be entitled to the services of an interpreter;**
- (l) that the defendant is entitled to a reasonable time to prepare for the hearing;**

- (m) that the defendant is entitled but not obliged to give written and oral evidence in their defence;*
- (n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant;*
- (o) that the court may proceed in the defendant's absence if they do not attend but (whether or not they attend) will only find the defendant in contempt if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;*
- (p) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine, imprisonment, confiscation of assets or other punishment under the law;*
- (q) that if the defendant admits the contempt and wishes to apologise to the court, that is likely to reduce the seriousness of any punishment by the court;*
- (r) that the court's findings will be provided in writing as soon as practicable after the hearing; and*
- (s) that the court will sit in public, unless and to the extent that the court orders otherwise, and that its findings will be made public."*

11. Closer home, **Section 29** of the **Environment and Land Court**

Act 8D provides as follows:-

“Any person who refuses, fails or neglects to obey an order or direction of the court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

12. The orders in this matter were issued on 24th November, 2025. However, the court takes judicial notice that the demolitions commenced on the 23rd of November, 2025 a day before the court issued the orders. Contempt of the orders of the court is a serious offence and is in the nature of criminal proceedings and therefore, proof of the act(s) against a contemnor is higher than that of a balance of probability. This is because the liberty of the subject is usually at stake. The petitioners/applicants must prove willful and deliberate disobedience of the court orders, if they are to succeed.
13. In the case of **Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui [2021] eKLR** the court cited with approval the case of **Gatharia K. Mutikika v Baharini Farm Limited [1985] KLR 227** where it was held:

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly,

beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.

14. The court went on to quote with approval as follows:-

“The Cromwell J, writing for the Supreme of Canada in Carey v Laiken, 2015 SCC 17 (16th April 2015),

expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court, thus:-

- i) The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.***

- ii) The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.***

- iii) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.”***

15. This court take judicial notice that while the 1st respondent is the original owner of the suit parcel, they did not conduct the

demolitions that were done on the suit property. The demolitions were sanctioned by the state to pave way for the affordable housing project. It is common knowledge that the demolitions were carried out by state-ordered bulldozers and there was heavy police presence, a matter that the 1st respondent's officials would not have had control over.

16. Further, as deposed by the chief executive officer of the 1st respondent, neither the 1st respondent nor its officials are responsible for the supply of electricity and water services in any locality, nor are they in control of the entities that supply the said services therefore it could not restore the said services as ordered by the court.

17. In my view, I find no wilful disobedience of the orders of this court by the 1st respondent's cited officials, and this exonerates them of being cited for being guilty of contempt of court.

18. The other order sought by the petitioners/ applicants is a conservatory order restraining the respondents and/or any person acting on their behest or instructions or authority from

undertaking any developments on the suit property. The elements necessary for the grant of conservatory orders were spelt out by the Learned Judges of the Supreme Court in the case of **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR** where it was stated as follows:-

“Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”

19. Further, in the case of **Gachagua & 40 others v Speaker, National Assembly & 15 others; Law Society of Kenya & 7 others (Interested Parties) (Constitutional Petition E565 of 2024 & Petition E013 (Kerugoya), E014 (Kerugoya), E015 (Kerugoya), E550 (Nairobi), E570 (Nairobi) & E572 (Nairobi) of 2024 (Consolidated)) [2024] KEHC 13473 (KLR)**

(Constitutional and Human Rights) (31 October 2024)

(Ruling) the three judge bench enumerated the principles to be considered in granting conservatory orders thus:-

“The three main principles for considering an application seeking conservatory orders were as follows:

(a) The need for the applicant to demonstrate an arguable prima facie case.

(b) Whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.

(c) Whether, if an interim conservatory order was not granted, the petition or its substratum would be rendered nugatory.”

20. There is a major public interest connotation to this suit, as the affordable housing project is part of the government’s initiative to provide affordable housing to its citizens. The court notes that it is an issue in contention that the government states that the affected persons were compensated for the already conducted demolitions but some residents say that they did not receive any

compensation.

- 21.** Since this is a public interest matter, and the court can order compensation if it finds that any genuine affected person was not compensated in the main hearing and determination of the suit, I decline to issue the conservatory order to prevent construction on the suit property at the interlocutory stage.
- 22.** From the above, I find no merit in the notice of motion dated 3rd December 2025, and it is hereby dismissed with no orders as to costs.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 29TH DAY OF APRIL, 2026**

**HON. MBOGO C.G.
JUDGE
29/04/2026**

In the presence of:

Mr. Benson Agunga - Court assistant

*Ms. Chanimbaga holding brief for Mr. Willis Otieno for the
Petitioners/Applicants*

Mr. Ataka for the 3rd Respondent

Ms. Mungai for the 1st Respondent

ORIGINAL